

**2005 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB686)**

Received: **01/27/2006**

Received By: **gmalaise**

Wanted: **02/03/2006**

Identical to LRB:

For: **Jeffrey Mursau (608) 266-3780**

By/Representing: **Andrew Potts**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - worker's comp**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Mursau@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Worker's compensation; permitting self-insured forestry industry groups

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 01/30/2006	wjackson 02/01/2006		_____			
/1			rschluet 02/02/2006	_____	lemery 02/02/2006	lemery 02/02/2006	

FE Sent For:

<END>

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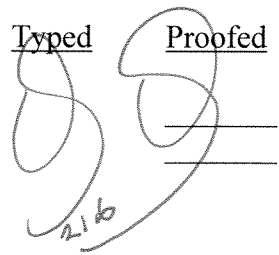
**Instructions:**

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FE Sent For:

<END>

## Malaise, Gordon

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**From:** Potts, Andrew  
**Sent:** Thursday, January 26, 2006 2:03 PM  
**To:** Malaise, Gordon  
**Subject:** Drafting request ASA to AB 686

Gordon,

Rep. Mursau would like to request an Assembly Sub to AB 686 (LRB-3276/1).

Here's what he's looking for:

- Change Section 1 to read: ""Self-insured group" means a group of employers engaged in the forest industry that has been granted an exemption under s. 102.28 (2) (bn) from the duty to insure the payment of compensation under this chapter."
- Change all of the references in Sections 2 through 20 to: "insurer or self-insured employer or self-insured group."
- Delete Section 21
- Change Section 22 to read: "102.28 (2) (bm) Exemption from duty to insure; forest industry groups. Under rules promulgated by the department, two or more employers engaged in the forest industry with combined assets of \$1,000,000.00 or more may be permitted by the department to enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as a self-insured group." Then, basically include the language from 102.28(2)(b) rewritten for the forest industry groups. We're trying to establish that "self-insured employers" and "self-insured groups" are two distinct entities.
- Create a new section to read: "102.28 (2) (bn)
  1. "Forest industry" shall be considered as those businesses engaged in the growing, harvesting, processing, or sale of forest products, except at the retail level, unless more than 80% of the income from the retailer comes from the growing, harvesting, processing, or wholesale sale of forest products, and any supplier or service companies that receive more than 80% of their income from these businesses.
  2. "Forest products" include Christmas trees, firewood, maple syrup, and all other products derived from wood or wood fiber which are manufactured with woodworking equipment including saws, planers, drills, chippers, lumber dry kilns, sanders, glue presses, nailers, notchers, shapers, lathes, molders, and other similar finishing processes."
- In Section 25, rewrite to create liability amongst self-insurers and liability amongst self-insured groups.
- In Section 26, establish a fund for the self-insured groups separate from the self-insurers' fund.
- Clean up language in Sections 27-31
- Delete Section 32

It's kind of a rush (within the next week). Feel free to contact me with questions. Thanks.

Andy

2005

Date (time)  
needed

DATE ✓  
Week of 11/30

LRBs 0493, 1

# SUBSTITUTE AMENDMENT [TO A BILL]

GMM : WLj : \_\_\_\_\_

Use the appropriate components and routines developed for substitute amendments.

§ (A) SUBSTITUTE AMENDMENT

TO 2005 ~~SB~~ AB 686 (LRB- / )

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; **relating to:** .....

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION #.

Week of 1/30

NOTE

**2005 ASSEMBLY BILL 686**

September 26, 2005 - Introduced by Representatives MURSAU, FRISKE, GARD, AINSWORTH, ALBERS, GRONEMUS, GUNDERSON, HAHN, HUBLER, MCCORMICK, MONTGOMERY, MUSSER, NERISON, OTT, OWENS, PETROWSKI, PETTIS, SUDER, TOWNSEND, M. WILLIAMS and KRAWCZYK, cosponsored by Senators KAPANKE, BRESKE, BROWN, GROTHMAN, HANSEN, A. LASEE and ROESSLER. Referred to Committee on Forestry.

Regulate

1 AN ACT *to amend* 102.125, 102.16 (1m) (a), 102.16 (1m) (b), 102.16 (2) (a), 102.16  
 2 (2) (am), 102.16 (2) (b), 102.16 (2) (c), 102.16 (2) (e) 1., 102.16 (2) (f), 102.16 (2m)  
 3 (a), 102.16 (2m) (am), 102.16 (2m) (b), 102.16 (2m) (c), 102.16 (2m) (d), 102.16  
 4 (2m) (e), 102.17 (1) (g), 102.18 (1) (bg) 1., 102.18 (1) (bw), 102.26 (3) (b) 3., 102.28  
 5 (2) (b), 102.28 (2) (c), 102.28 (2) (d), 102.28 (7) (a), 102.28 (7) (b), 102.33 (2) (b)  
 6 (intro.), 102.33 (2) (b) 3., 102.75 (1), 102.75 (2), 102.75 (4) and 626.12 (2); and  
 7 *to create* 102.01 (2) (er) and 102.28 (2) (bm) of the statutes; **relating to:**  
 8 permitting <sup>Certain</sup> two or more employers engaged in the <sup>forestry</sup> logging industry to pool their  
 9 worker's compensation liabilities for purposes of operating as self-insurers and  
 10 requiring the establishment of separate classifications and worker's  
 11 compensation insurance rates for mechanized logging operations and for  
 12 manual logging operations. *a self-insured group and granting rule-making authority*

***Analysis by the Legislative Reference Bureau***

Under current law, every employer that is subject to the worker's compensation law must carry worker's compensation insurance from an insurer that is authorized

**ASSEMBLY BILL 686**

to do business in this state (duty to insure), except that the Department of Workforce Development (DWD) may exempt an employer from the duty to insure if the employer shows that it is able to self-insure its worker's compensation liability and if the employer agrees to report all compensable injuries and to comply with the worker's compensation law and the <sup>rules</sup> ~~rule~~ of DWD. This bill permits two or more employers engaged in the logging industry to pool their worker's compensation liabilities for purposes of obtaining an exemption from the duty to insure and operating as self-insurers of their worker's compensation liabilities.

Under current law, the Wisconsin Compensation Rating Bureau (WCRB) classifies risks and establishes rates for worker's compensation insurance written in this state. Current law permits risks to be classified in any reasonable way for the establishment of rates and permits rates to be modified for individual risks in accordance with standards for measuring variations in hazards. This bill requires the WCRB to establish separate classifications and rates for mechanized logging operations and for manual logging operation.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 102.01 (2) (er) of the statutes is created to read:

102.01 (2) (er) "Self-insurer" means an employer that has been granted an exemption under s. 102.28 (2) (b) from the duty to insure the payment of compensation under this chapter or, in the case of a group of employers engaged in the logging industry that has been granted that exemption, that group or an employer that is a member of that group.

**SECTION 2.** 102.125 of the statutes is amended to read:

**102.125 Fraudulent claims reporting and investigation.** If an insurer or self-insured employer self-insurer has evidence that a claim is false or fraudulent in violation of s. 943.395 and if the insurer or self-insured employer self-insurer is satisfied that reporting the claim to the department will not impede its ability to defend the claim, the insurer or self-insured employer self-insurer shall report the claim to the department. The department may require an insurer or self-insured

## ASSEMBLY BILL 686

(Use 8 times)

3 =

or self-insured group

1 employer ~~self-insurer~~ to investigate an allegedly false or fraudulent claim and may

2 provide the insurer ~~or self-insured employer self-insurer~~ with any records of the

3 department relating to that claim. An insurer ~~or self-insured employer self-insurer~~

4 that investigates a claim under this section shall report on the results of that

5 investigation to the department. If based on the investigation the department has

6 a reasonable basis to believe that a violation of s. 943.395 has occurred, the

7 department shall refer the results of the investigation to the district attorney of the

8 county in which the alleged violation occurred for prosecution.

9 SECTION 3. 102.16 (1m) (a) of the statutes is amended to read:

10 102.16 (1m) (a) If an insurer ~~or self-insured employer self-insurer~~ concedes

11 by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer

12 ~~or self-insured employer self-insurer~~ is liable under this chapter for any health

13 services provided to an injured employee by a health service provider, but disputes

14 the reasonableness of the fee charged by the health service provider, the department

15 may include in its order confirming the compromise or stipulation a determination

16 as to the reasonableness of the fee or the department may notify, or direct the insurer

17 ~~or self-insured employer self-insurer~~ to notify, the health service provider under

18 sub. (2) (b) that the reasonableness of the fee is in dispute.

19 SECTION 4. 102.16 (1m) (b) of the statutes is amended to read:

20 102.16 (1m) (b) If an insurer ~~or self-insured employer self-insurer~~ concedes

21 by compromise under sub. (1) or stipulation under s. 102.18 (1) (a) that the insurer

22 ~~or self-insured employer self-insurer~~ is liable under this chapter for any treatment

23 provided to an injured employee by a health service provider, but disputes the

24 necessity of the treatment, the department may include in its order confirming the

25 compromise or stipulation a determination as to the necessity of the treatment or the

## ASSEMBLY BILL 686

for self-insured group

(use 4 times)

1 department may notify, or direct the insurer ~~or self-insured employer~~ self-insurer,  
2 to notify, the health service provider under sub. (2m) (b) that the necessity of the  
3 treatment is in dispute.

4 SECTION 5. 102.16 (2) (a) of the statutes is amended to read:

5 102.16 (2) (a) Except as provided in this paragraph, the department has  
6 jurisdiction under this subsection, sub. (1m) (a), and s. 102.17 to resolve a dispute  
7 between a health service provider and an insurer ~~or self-insured employer~~ self-insurer  
8 self-insurer over the reasonableness of a fee charged by the health service provider  
9 for health services provided to an injured employee who claims benefits under this  
10 chapter. A health service provider may not submit a fee dispute to the department  
11 under this subsection before all treatment by the health service provider of the  
12 employee's injury has ended if the amount in controversy, whether based on a single  
13 charge or a combination of charges for one or more days of service, is less than \$25.  
14 After all treatment by a health service provider of an employee's injury has ended,  
15 the health service provider may submit any fee dispute to the department, regardless  
16 of the amount in controversy. The department shall deny payment of a health service  
17 fee that the department determines under this subsection, sub. (1m) (a), or s. 102.18  
18 (1) (b) to be unreasonable.

19 SECTION 6. 102.16 (2) (am) of the statutes is amended to read:

20 102.16 (2) (am) A health service provider and an insurer ~~or self-insured~~ self-insurer  
21 employer self-insurer that are parties to a fee dispute under this subsection are  
22 bound by the department's determination under this subsection on the  
23 reasonableness of the disputed fee, unless that determination is set aside on judicial  
24 review as provided in par. (f). A health service provider and an insurer ~~or~~ self-insurer  
25 self-insured employer self-insurer that are parties to a fee dispute under sub. (1m)



(has 5 times)

- 5 -

plan

14/11

10

(a) 2

Lplan

(plane)

## ASSEMBLY BILL 686

1 information required under this paragraph, the department shall determine that the  
2 disputed fee is reasonable and order that it be paid. If the insurer ~~or self-insured~~ <sup>(plan)</sup>  
3 ~~employer self-insurer~~ <sup>(plan)</sup> provides the information required under this paragraph, the  
4 department shall use that information to determine the reasonableness of the  
5 disputed fee.

6 SECTION 9. 102.16 (2) (e) 1. of the statutes is amended to read:

7 102.16 (2) (e) 1. Subject to subd. 2., if an insurer ~~or self-insured employer~~ <sup>(plan)</sup>  
8 ~~self-insurer~~ <sup>2</sup> that disputes the reasonableness of a fee charged by a health service  
9 provider cannot provide information on fees charged by other health service  
10 providers for comparable services because the database to which the insurer ~~or~~ <sup>(plan)</sup>  
11 ~~self-insured employer self-insurer~~ <sup>(plan)</sup> subscribes is not able to provide accurate  
12 information for the health service procedure at issue, the department may use any  
13 other information that the department considers to be reliable and relevant to the  
14 disputed fee to determine the reasonableness of the disputed fee.

15 SECTION 10. 102.16 (2) (f) of the statutes is amended to read:

16 102.16 (2) (f) Within 30 days after a determination under this subsection, the  
17 department may set aside, reverse, or modify the determination for any reason that  
18 the department considers sufficient. Within 60 days after a determination under  
19 this subsection, the department may set aside, reverse, or modify the determination  
20 on grounds of mistake. A health service provider, insurer, ~~or self-insured employer~~ <sup>(plan)</sup>  
21 ~~self-insurer~~ <sup>2</sup> that is aggrieved by a determination of the department under this  
22 subsection may seek judicial review of that determination in the same manner that  
23 compensation claims are reviewed under s. 102.23.

24 SECTION 11. 102.16 (2m) (a) of the statutes is amended to read:

## ASSEMBLY BILL 686

102.16 (2m) (a) Except as provided in this paragraph, the department has jurisdiction under this subsection, sub. (1m) (b), and s. 102.17 to resolve a dispute between a health service provider and an insurer ~~or self-insured employer~~ <sup>(plan)</sup> ~~self-insured~~ over the necessity of treatment provided for an injured employee who claims benefits under this chapter. A health service provider may not submit a dispute over necessity of treatment to the department under this subsection before all treatment by the health service provider of the employee's injury has ended if the amount in controversy, whether based on a single charge or a combination of charges for one or more days of service, is less than \$25. After all treatment by a health service provider of an employee's injury has ended, the health service provider may submit any dispute over necessity of treatment to the department, regardless of the amount in controversy. The department shall deny payment for any treatment that the department determines under this subsection, sub. (1m) (b), or s. 102.18 (1) (b) to be unnecessary.

SECTION 12. 102.16 (2m) (am) of the statutes is amended to read:

102.16 (2m) (am) A health service provider and an insurer ~~or self-insured employer~~ <sup>(plan)</sup> ~~self-insured~~ that are parties to a dispute under this subsection over the necessity of treatment are bound by the department's determination under this subsection on the necessity of that treatment, unless that determination is set aside on judicial review as provided in par. (e). A health service provider and an insurer ~~or self-insured employer~~ <sup>(plan)</sup> ~~self-insured~~ that are parties to a dispute under sub. (1m) (b) over the necessity of treatment are bound by the department's determination under sub. (1m) (b) on the necessity of that treatment, unless that determination is set aside or modified by the department under sub. (1). An insurer ~~or self-insured employer~~ <sup>(plan)</sup> ~~self-insured~~ that is a party to a dispute under s. 102.17 over the necessity

## ASSEMBLY BILL 686

## SECTION 12

1 of treatment and a health service provider are bound by the department's  
2 determination under s. 102.18 (1) (b) on the necessity of that treatment, unless that  
3 determination is set aside, reversed or modified by the department under s. 102.18  
4 (3) or by the commission under s. 102.18 (3) or (4) or is set aside on judicial review  
5 under s. 102.23.

6 **SECTION 13.** 102.16 (2m) (b) of the statutes is amended to read:

7 102.16 (2m) (b) An insurer <sup>or</sup> ~~self-insured employer~~ <sup>self-insurer</sup> that disputes  
8 the necessity of treatment provided by a health service provider or the department  
9 under sub. (1m) (b) or s. 102.18 (1) (bg) 2. shall provide reasonable notice to the health  
10 service provider that the necessity of that treatment is being disputed. After  
11 receiving reasonable notice under this paragraph or under sub. (1m) (b) or s. 102.18  
12 (1) (bg) 2. that the necessity of treatment is being disputed, a health service provider  
13 may not collect a fee for that disputed treatment from, or bring an action for collection  
14 of the fee for that disputed treatment against, the employee who received the  
15 treatment.

16 **SECTION 14.** 102.16 (2m) (c) of the statutes is amended to read:

17 102.16 (2m) (c) Before determining under this subsection the necessity of  
18 treatment provided for an injured employee who claims benefits under this chapter,  
19 the department shall obtain a written opinion on the necessity of the treatment in  
20 dispute from an expert selected by the department. Before determining under sub.  
21 (1m) (b) or s. 102.18 (1) (bg) 2. the necessity of treatment provided for an injured  
22 employee who claims benefits under this chapter, the department may, but is not  
23 required to, obtain such an expert opinion. To qualify as an expert, a person must  
24 be licensed to practice the same health care profession as the individual health  
25 service provider whose treatment is under review and must either be performing

services for an impartial health care services review organization or be a member of an independent panel of experts established by the department under par. (f). The department shall adopt the written opinion of the expert as the department's determination on the issues covered in the written opinion, unless the health service provider or the insurer ~~or self-insured employer~~ <sup>self-insurer</sup> presents clear and convincing written evidence that the expert's opinion is in error.

SECTION 15. 102.16 (2m) (d) of the statutes is amended to read:

102.16 (2m) (d) The department may charge a party to a dispute over the necessity of treatment provided for an injured employee who claims benefits under this chapter for the full cost of obtaining the written opinion of the expert under par. (c). The department shall charge the insurer ~~or self-insured employer~~ <sup>self-insurer</sup> for the full cost of obtaining the written opinion of the expert for the first dispute that a particular individual health service provider is involved in, unless the department determines that the individual health service provider's position in the dispute is frivolous or based on fraudulent representations. In a subsequent dispute involving the same individual health service provider, the department shall charge the losing party to the dispute for the full cost of obtaining the written opinion of the expert.

SECTION 16. 102.16 (2m) (e) of the statutes is amended to read:

102.16 (2m) (e) Within 30 days after a determination under this subsection, the department may set aside, reverse, or modify the determination for any reason that the department considers sufficient. Within 60 days after a determination under this subsection, the department may set aside, reverse, or modify the determination on grounds of mistake. A health service provider, insurer, ~~or self-insured employer~~ <sup>self-insurer</sup> that is aggrieved by a determination of the department under this

subsection may seek judicial review of that determination in the same manner that compensation claims are reviewed under s. 102.23.

**SECTION 17.** 102.17 (1) (g) of the statutes is amended to read:

102.17 (1) (g) Whenever the testimony presented at any hearing indicates a dispute or creates a doubt as to the extent or cause of disability or death, the department may direct that the injured employee be examined, that an autopsy be performed, or that an opinion be obtained without examination or autopsy, by or from an impartial, competent physician, chiropractor, dentist, psychologist or podiatrist designated by the department who is not under contract with or regularly employed by a compensation insurance carrier <sup>or</sup> ~~self-insured employer~~ <sup>Plan</sup> ~~self-insurer~~. The expense of the examination, autopsy, or opinion shall be paid by the employer or, if the employee claims compensation under s. 102.81, from the uninsured employers fund. The report of the examination, autopsy, or opinion shall be transmitted in writing to the department and a copy of the report shall be furnished by the department to each party, who shall have an opportunity to rebut such report on further hearing.

**SECTION 18.** 102.18 (1) (bg) 1. of the statutes is amended to read:

102.18 (1) (bg) 1. If the department finds under par. (b) that an insurer <sup>Plan</sup> ~~or~~ ~~self-insured employer~~ ~~self-insurer~~ is liable under this chapter for any health services provided to an injured employee by a health service provider, but that the reasonableness of the fee charged by the health service provider is in dispute, the department may include in its order under par. (b) a determination as to the reasonableness of the fee or the department may notify, or direct the insurer <sup>Plan</sup> ~~or~~ ~~self-insured employer~~ ~~self-insurer~~ to notify, the health service provider under s. 102.16 (2) (b) that the reasonableness of the fee is in dispute.

ASSEMBLY BILL 686

or self-insured group

SECTION 19. 102.18 (1) (bw) of the statutes is amended to read:

102.18 (1) (bw) If an insurer, a self-insured employer self-insurer or, if applicable, the uninsured employers fund pays compensation to an employee in excess of its liability and another insurer is liable for all or part of the excess payment, the department may order the insurer or self-insured employer self-insurer that is liable to reimburse the insurer or self-insured employer self-insurer that made the excess payment or, if applicable, the uninsured employers fund.

SECTION 20. 102.26 (3) (b) 3. of the statutes is amended to read:

102.26 (3) (b) 3. The claimant may request the insurer or self-insured employer self-insurer to pay any compensation that is due the claimant by depositing the payment directly into an account maintained by the claimant at a financial institution. If the insurer or self-insured employer self-insurer agrees to the request, the insurer or self-insured employer self-insurer may deposit the payment by direct deposit, electronic funds transfer, or any other money transfer technique approved by the department. The claimant may revoke a request under this subdivision at any time by providing appropriate written notice to the insurer or

self-insured employer self-insurer

SECTION 21. 102.28 (2) (b) of the statutes is amended to read:

102.28 (2) (b) Exemption from duty to insure. The department may grant a written order of exemption to an employer who, or group of employers engaged in the logging industry, that shows its financial ability to pay the amount of compensation, agrees to report faithfully all compensable injuries, and agrees to comply with this chapter and the rules of the department. The department may condition the granting of an exemption upon the employer's applicant's furnishing of satisfactory

## ASSEMBLY BILL 686

## SECTION 21

1 security to guarantee payment of all claims under compensation. The department  
 2 may require that bonds or other personal guarantees be enforceable against sureties  
 3 in the same manner as an award may be enforced. The department may from time  
 4 to time require proof of financial ability of the employer or group of employers to pay  
 5 compensation. Any exemption shall be void if the application for it contains a  
 6 financial statement which that is false in any material respect. An employer who or  
 7 an employer that is a member of a group of employers that files an application  
 8 containing a false financial statement remains subject to par. (a). The department  
 9 may promulgate rules establishing an amount to be charged to an initial applicant  
 10 for exemption under this paragraph and an annual amount to be charged to  
 11 employers and groups of employers that have been exempted under this paragraph.

12 **SECTION 22.** 102.28 (2) (bm) of the statutes is created to read:

13 102.28 (2) (bm) *Exemption from duty to insure; logging industry groups.* Two  
 14 or more employers engaged in the logging industry may enter into an agreement to  
 15 pool their liabilities under this chapter for purposes of obtaining an exemption under  
 16 par. (b). If the department grants an exemption under par. (b) to a group of 2 or more  
 17 employers engaged in the logging industry, each employer that is a member of the  
 18 group shall be exempt under par. (b) and may operate as a self-insurer under this

19 chapter.

or to a self-insured group under par. (b) 30

20 **SECTION 23.** 102.28 (2) (c) of the statutes is amended to read:

21 102.28 (2) (c) *Revocation of exemption.* The department, after seeking the  
 22 advice of the self-insurers council, may revoke an exemption granted to an employer  
 23 or group of employers under par. (b), upon giving the employer or group of employers  
 24 10 days' written notice, if the department finds that the employer's financial  
 25 condition of the employer or group of employers is inadequate to pay its employees'

self-insured group

or self-insured group

Insured  
12-19

a self-insured

self-insured

self-insured



## ASSEMBLY BILL 686

1 claims for compensation, that the employer or group of employers has received an  
 2 excessive number of claims for compensation, or that the employer or group of  
 3 employers has failed to discharge faithfully its obligations according to the  
 4 agreement contained in the application for exemption. The employer or group of  
 5 employers may, within 10 days after receipt of the notice of revocation, request in  
 6 writing a review of the revocation by the secretary or the secretary's designee and the  
 7 secretary or the secretary's designee shall review the revocation within 30 days after  
 8 receipt of the request for review. If the employer or group of employers is aggrieved  
 9 by the determination of the secretary or the secretary's designee, the employer or  
 10 group of employers may, within 10 days after receipt of notice of that determination,  
 11 request a hearing under s. 102.17. If the secretary or the secretary's designee  
 12 determines that the employer's exemption of the employer or group of employers  
 13 should be revoked, the employer, or each employer that is a member of the group of  
 14 employers, shall obtain insurance coverage as required under par. (a) immediately  
 15 upon receipt of notice of that determination and, notwithstanding the pendency of  
 16 proceedings under ss. 102.17 to 102.25, shall keep that coverage in force until  
 17 another exemption under par. (b) is granted.

18 SECTION 24. 102.28 (2) (d) of the statutes is amended to read:

19 102.28 (2) (d) *Effect of insuring with unauthorized insurer.* An employer who  
 20 or group of employers that procures an exemption under par. (b) and thereafter  
 21 enters into any agreement for excess insurance coverage with an insurer not  
 22 authorized to do business in this state shall report that agreement to the department  
 23 immediately. The placing of such coverage shall not by itself be grounds for  
 24 revocation of the exemption.

25 SECTION 25. 102.28 (7) (a) of the statutes is amended to read:

## ASSEMBLY BILL 686

## SECTION 25

102.28 (7) (a) If an employer ~~who~~ or group of employers that is currently or was formerly exempted by written order of the department under sub. (2) (b) is unable to pay an award, judgment is rendered in accordance with s. 102.20 against that employer or group of employers, and execution is levied and returned unsatisfied in whole or in part, payments for the employer's liability of the employer or group of employers shall be made from the fund established under sub. (8). If a currently or formerly exempted employer or group of employers files for bankruptcy and not less than 60 days after that filing the department has reason to believe that compensation payments due are not being paid, the department in its discretion may make payment for the employer's liability of the employer or group of employers from the fund established under sub. (8). The secretary of administration shall proceed to recover such those payments from the employer, the group of employers, or the employer's receiver or trustee in bankruptcy of the employer or group of employers, and may commence an action or proceeding or file a claim therefor for those payments. The attorney general shall appear on behalf of the secretary of administration in any such action or proceeding. All moneys recovered in any such action or proceeding shall be paid into the fund established under sub. (8).

**SECTION 26.** 102.28 (7) (b) of the statutes is amended to read:

102.28 (7) (b) Each employer or group of employers exempted by written order of the department under sub. (2) (b) shall pay into the fund established by sub. (8) a sum equal to that assessed against each of the other such exempt employers and groups of employers upon the issuance of an initial order. The order shall provide for a sum sufficient to secure estimated payments of the insolvent exempt employer or group of employers due for the period up to the date of the order and for one year following the date of the order and to pay the estimated cost of insurance carrier or

## ASSEMBLY BILL 686

insurance service organization services under par. (c). Payments ordered to be made to the fund shall be paid to the department within 30 days. If additional moneys are required, further assessments shall be made based on orders of the department with assessment prorated on the basis of the gross payroll for this state of the exempt employer, or of each employer that is a member of the group of employers, reported to the department for the previous calendar year for unemployment insurance purposes under ch. 108. If the exempt employer, or an employer that is a member of a group of employers, is not covered under ch. 108, then the department shall determine the comparable gross payroll for the exempt employer or for each employer that is a member of the group of employers. If payment of any assessment made under this subsection is not made within 30 days of after the order of the department, the attorney general may appear on behalf of the state to collect the assessment.

**SECTION 27.** 102.33 (2) (b) (intro.) of the statutes is amended to read:

102.33 (2) (b) (intro.) Notwithstanding par. (a), a record maintained by the department that reveals the identity of an employee who claims worker's compensation benefits, the nature of the employee's claimed injury, the employee's past or present medical condition, the extent of the employee's disability, the amount, type or duration of benefits paid to the employee or any financial information provided to the department by a self-insured employer self-insurer or by an applicant for exemption under s. 102.28 (2) (b) is confidential and not open to public inspection or copying under s. 19.35 (1). The department may deny a request made under s. 19.35 (1) or, subject to s. 102.17 (2m) and (2s), refuse to honor a subpoena issued by an attorney of record in a civil or criminal action or special proceeding to

Insert  
15-13

or self-insured group

Nil 9

or (bm) 43

1 inspect and copy a record that is confidential under this paragraph, unless one of the  
 2 following applies:

3 **SECTION 28.** 102.33 (2) (b) 3. of the statutes is amended to read:

4 102.33 (2) (b) 3. The record that is requested contains financial information  
 5 provided by a self-insured employer or by an applicant for exemption  
 6 under s. 102.28 (2) (b) and the requester is the self-insured employer  
 7 or applicant for exemption or an attorney or authorized agent of the  
 8 employer or applicant for exemption. An attorney or authorized agent  
 9 of the self-insured employer or of the applicant for exemption shall  
 10 provide a written authorization for inspection and copying from the  
 11 employer or applicant for exemption if requested by the department.

12 **SECTION 29.** 102.75 (1) of the statutes is amended to read:

13 102.75 (1) The department shall assess upon and collect from each licensed  
 14 worker's compensation insurance carrier, and from each employer  
 15 ~~employers~~ exempted under s. 102.28 (2) (b) by special order or by rule, the proportion  
 16 of total costs and expenses incurred by the council on worker's compensation for  
 17 travel and research and by the department and the commission in the  
 18 administration of this chapter for the current fiscal year, plus any deficiencies in  
 19 collections and anticipated costs from the previous fiscal year, that the total  
 20 indemnity paid or payable under this chapter by each such carrier and, exempt  
 21 ~~an employer, and exempt group of employers~~ in worker's compensation cases initially  
 22 closed during the preceding calendar year, other than for increased, double, or treble  
 23 compensation, bore to the total indemnity paid in cases closed the previous calendar  
 24 year under this chapter by all carriers and, exempt employer ~~employers, and exempt~~  
 25 ~~groups of employers~~ other than for increased, double, or treble compensation. The

And from each self-insured group exempted  
 under so 102.28 (2) (b) by special rule  
 or order

1 council on worker's compensation and the commission shall annually certify any  
 2 costs and expenses for worker's compensation activities to the department at such  
 3 time as the secretary requires.

4 **SECTION 30.** 102.75 (2) of the statutes is amended to read:

5 102.75 (2) The department shall require that payments for costs and expenses  
 6 for each fiscal year shall be made on such dates as the department prescribes by each  
 7 licensed worker's compensation insurance carrier ~~and by each employer and group~~  
 8 ~~of employers~~ exempted under s. 102.28 (2) (b). Each such payment shall be a sum  
 9 equal to a proportionate share of the annual costs and expenses assessed upon each  
 10 carrier ~~and~~ self-insured employer, ~~and group of employers~~ self-insured as estimated by the department.

11 **SECTION 31.** 102.75 (4) of the statutes is amended to read:

12 102.75 (4) From the appropriation under s. 20.445 (1) (ha), the department  
 13 shall allocate the amounts that it collects in application fees from employers ~~and~~  
 14 ~~groups of employers~~ self-insured applying for exemption under s. 102.28 (2) (b) and the annual  
 15 amount that it collects from employers ~~and groups of employers~~ self-insured that have been  
 16 exempted under s. 102.28 (2) (b) to fund the activities of the department under s.  
 17 102.28 (2) (b) and (c).

18 **SECTION 32.** 626.12 (2) of the statutes is amended to read:

19 626.12 (2) CLASSIFICATION. Risks may be classified in any reasonable way for  
 20 the establishment of rates and minimum premiums. Classification rates may be  
 21 modified to produce rates for individual risks in accordance with rating plans which  
 22 establish standards for measuring variations in hazards or expense provisions, or  
 23 both. Such standards may measure any differences among risks that can be  
 24 demonstrated to have a probable effect upon losses or expenses. In classifying risks  
 25 and establishing rates for the logging industry, the bureau shall establish separate

917 - by  
 14 and From each self-insured  
 group exempted under s. 102.28 (2) (b) 30

self-insured

score

and from groups of employers

applying for exemption

under s. 102.28 (2)

(b) 30

and from self-insured groups that have been  
 exempted under s. 102.28 (2) (b) 30

## ASSEMBLY BILL 686

## SECTION 32

1 classifications and rates for mechanized logging operations and for manual logging  
 2 operations.

3 (END)

NOTE

Representative Mursau

① In reviewing this draft, please note all of the following:

① 10 self-insured group is not defined under current law, self-insured employer is not defined because the only authority for an employer to self-insure is found in 50 102024(2) Similarly Munder the draft, the only authority for a group to self-insure is found in 50 102028 (2) (bm). Accordingly, neither self-insured employer nor self-insured group need to be defined.

① 20 The DWD technical memorandum states that in order for group self-insurance to work, the members of the group need to assume joint and several liability for the payment of each others' liability. Accordingly, this draft expressly requires the members of a self-insured group to assume that liability.

GMM ✓

**2005-2006 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0493/lins  
GMM.....

(INSERT 2-6)

**SECTION 1.** 20.445 (1) (ha) of the statutes is amended to read:

20.445 (1) (ha) *Worker's compensation operations.* The amounts in the schedule for the administration of the worker's compensation program by the department. All moneys received under ss. 102.28 (2) (b) and (bm) and 102.75 for the department's activities and not appropriated under par. (hp) shall be credited to this appropriation. From this appropriation, an amount not to exceed \$5,000 may be expended each fiscal year for payment of expenses for travel and research by the council on worker's compensation.

**History:** 1971 c. 125 ss. 156, 522 (1); 1971 c. 211, 215; 1971 c. 228 s. 44; 1971 c. 259; 1973 c. 90, 180, 243, 333; 1975 c. 39, 147, 224, 274, 344; 1975 c. 404 ss. 3, 10 (1); 1975 c. 405 ss. 3, 11 (1); 1977 c. 29, 48, 203, 418; 1979 c. 34 ss. 512 to 522, 2102 (25) (a); 1979 c. 189, 221, 309; 1979 c. 329 s. 25 (1); 1979 c. 350 ss. 3, 27 (6); 1979 c. 353, 355; 1981 c. 20, 36, 92, 93, 317, 325, 364; 1983 a. 8; 1983 a. 27 ss. 411 to 425; 1983 a. 98 ss. 1, 31; 1983 a. 192, 384, 388, 410; 1985 a. 17, 29, 153, 313, 332; 1987 a. 27; 1987 a. 38 ss. 2 to 4, 136; 1987 a. 399, 403; 1989 a. 31, 44, 64, 77, 254, 284, 359; 1991 a. 39 ss. 372c, 545r, 545t, 545v, 547, 548, 548g, 548m, 549, 549b, 549g, 549p; 1991 a. 85, 89, 269, 315; 1993 a. 16, 126, 243, 437, 491; 1995 a. 27 ss. 772mm, 772mn, 776p to 778b, 778L, 778n, 778q, 778v, 778z to 780m, 781m to 782p, 782u, 841, 842, 849, 850, 854, 855, 858c, 873 to 876, 878, 880, 890 to 896, 962 to 1014c, 9126 (19), 9130 (4); 1995 a. 113 s. 2t; 1995 a. 117, 201, 216, 225, 289; 1995 a. 404 ss. 4, 6 to 8, 10 to 17; 1997 a. 3; 1997 a. 27 ss. 610 to 642m, 722; 1997 a. 35, 38, 39, 105, 112, 191, 235, 236, 237, 252; 1999 a. 9 ss. 270, 458 to 478; 1999 a. 15, 32; 2001 a. 16, 35, 43, 104, 109; 2003 a. 33, 197; 2005 a. 25.

**SECTION 2.** 20.445 (1) (sg) of the statutes is created to read:

20.445 (1) (sg) *Self-insured groups liability fund.* All moneys paid into the self-insured groups liability fund under s. 102.28 (9), to be used for the discharge of liability and claims service authorized under <sup>that</sup> ~~such~~ subsection.

**SECTION 3.** 25.17 (1) (pd) of the statutes is created to read:

25.17 (1) (pd) Self-insured groups liability fund (s. 102.28 (10));

(END OF INSERT)

(INSERT 11-18)

**SECTION 4.** 102.28 (2) (a) of the statutes is amended to read:

102.28 (2) (a) *Duty to insure payment for compensation.* Unless exempted by the department under par. (b) or (bm) 3, or sub. (3), every employer, as described in s. 102.04 (1), shall insure payment for that compensation in an insurer authorized to do business in this state. A joint venture may elect to be an employer under this

chapter and obtain insurance for payment of compensation. If a joint venture that is subject to this chapter only because the joint venture elected to be an employer under this chapter is dissolved and cancels or terminates its contract for the insurance of compensation under this chapter, that joint venture is deemed to have effected withdrawal, which shall be effective on the day after the contract is canceled or terminated.

**History:** 1973 c. 150; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 147 ss. 23, 54; 1975 c. 199; 1977 c. 195; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38, 39; 2003 a. 33.

(END OF INSERT)

(INSERT 12-19)

**SECTION ~~5~~ 102.28** (2) (bm) of the statutes is created to read:

102.28 (2) (bm) *Exemption from duty to insure; self-insured groups.* 1. In this paragraph:

a. "Forest industry" means the business of growing, harvesting, processing, or selling forest products, except that "forest industry" includes the business of selling forest products at the retail level only if the retailer receives more than 80 percent of its income from the growing, harvesting, processing, or wholesale sale of forest products. "Forest industry" also includes the business of supplying or servicing a business engaged in the growing, harvesting, processing, or selling of forest products, if the person engaged in that supplying or servicing receives more than 80 percent of its income from businesses engaged in the growing, harvesting, processing, or selling of forest products.

b. "Forest product" includes Christmas trees, firewood, maple syrup, and any other product derived from wood or wood fiber that is manufactured with woodworking equipment, such as saws, planers, drills, chippers, lumber dry kilns,



sanders, glue presses, nailers, notchers, shapers, lathes, molders, and other similar finishing equipment.

2. The department, under rules promulgated by the department, may permit 2 or more employers engaged in the forest industry that have combined assets of \$1,000,000 or more to enter into an agreement to pool their liabilities under this chapter for the purpose of obtaining an exemption from the duty under par. (a) to insure payment of those liabilities, if those employers agree to assume joint and several liability for the payment of those liabilities.

3. The department may grant a written order of exemption to a group of employers described in subd. 2. that shows its financial ability to pay the amount of compensation, agrees to report faithfully all compensable injuries, and agrees to comply with this chapter and the rules of the department. The department may condition the granting of an exemption upon the group's furnishing of satisfactory security to guarantee payment of all claims under compensation. The department may require that bonds or other personal guarantees be enforceable against sureties in the same manner as an award may be enforced. The department may from time to time require proof of financial ability of the self-insured group to pay compensation. Any exemption shall be void if the application for it contains a financial statement that is false in any material respect. An employer that is a member of a group that files an application containing a false financial statement remains subject to par. (a). The department may promulgate rules establishing an amount to be charged to an initial applicant for exemption under this subdivision

and an annual amount to be charged to self-insured groups that have been exempted under this subdivision.

(END OF INSERT)

(INSERT 15-13)

~~SECTION 6~~ 102.28 (7) (title) of the statutes is amended to read:

102.28 (7) (title) INSOLVENT SELF-INSURED EMPLOYERS; ASSESSMENTS.

**History:** 1973 c. 150; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 147 ss. 23, 54; 1975 c. 199; 1977 c. 195; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38, 39; 2003 a. 33.

~~SECTION 7~~ 102.28 (7) (a) of the statutes is amended to read:

102.28 (7) (a) If an employer who is currently or was formerly exempted by written order of the department under sub. (2) (b) is unable to pay an award, judgment is rendered in accordance with s. 102.20 against that employer, and execution is levied and returned unsatisfied in whole or in part, payments for the employer's liability shall be made from the fund established under sub. (8). If a currently or formerly exempted employer files for bankruptcy and not less than 60 days after that filing the department has reason to believe that compensation payments due are not being paid, the department in its discretion may make payment for the employer's liability from the fund established under sub. (8). The secretary of administration shall proceed to recover such those payments from the employer or the employer's receiver or trustee in bankruptcy, and may commence an action or proceeding or file a claim ~~therefor~~ for those payments. The attorney general shall appear on behalf of the secretary of administration in any such action or proceeding. All moneys recovered in any such action or proceeding shall be paid into the fund established under sub. (8).

**History:** 1973 c. 150; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 147 ss. 23, 54; 1975 c. 199; 1977 c. 195; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38, 39; 2003 a. 33.

~~SECTION 8~~ 102.28 (7) (b) of the statutes is amended to read:

102.28 (7) (b) Each self-insured employer that is exempted by written order of the department under sub. (2) (b) shall pay into the fund established by sub. (8) a sum equal to that assessed against each of the other such exempt self-insured employers upon the issuance of an initial order. The order shall provide for a sum sufficient to secure estimated payments of the insolvent exempt self-insured employer due for the period up to the date of the order and for one year following the date of the order and to pay the estimated cost of insurance carrier or insurance service organization services under par. (c). Payments ordered to be made to the fund shall be paid to the department within 30 days. If additional moneys are required, further assessments shall be made based on orders of the department with assessment prorated on the basis of the gross payroll for this state of the exempt self-insured employer, reported to the department for the previous calendar year for unemployment insurance purposes under ch. 108. If the exempt self-insured employer is not covered under ch. 108, then the department shall determine the comparable gross payroll for the exempt self-insured employer. If payment of any assessment made under this subsection is not made within 30 days of the order of the department, the attorney general may appear on behalf of the state to collect the assessment.

**History:** 1973 c. 150; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 147 ss. 23, 54; 1975 c. 199; 1977 c. 195; 1981 c. 92; 1983 a. 98; 1985 a. 83; 1987 a. 179; 1989 a. 64; 1991 a. 85; 1993 a. 81; 1995 a. 117; 1997 a. 38, 39; 2003 a. 33.

**SECTION 9.** 102.28 (9) of the statutes is created to read:

102.28 (9) INSOLVENT SELF-INSURED GROUPS; ASSESSMENTS. (a) If a group of  
\* employers that is currently or was formerly exempted by written order of the  
department under sub. (2) (bm) 3. is unable to pay an award, judgment is rendered  
in accordance with s. 102.20 against that group, and execution is levied and returned  
unsatisfied in whole or in part, payments for the group's liability shall be made from

the fund established under sub. (10). If a currently or formerly exempted group of employers files for bankruptcy and not less than 60 days after that filing the department has reason to believe that compensation payments due are not being paid, the department in its discretion may make payment for the group's liability from the fund established under sub. (10). The secretary of administration shall proceed to recover those payments from the group, the members of the group, or the group's receiver or trustee in bankruptcy, and may commence an action or proceeding or file a claim for those payments. The attorney general shall appear on behalf of the secretary of administration in any such action or proceeding. All moneys recovered in any such action or proceeding shall be paid into the fund established under sub. (10).

(b) Each self-insured group that is exempted by written order of the department under sub. (2) (bm) 3. shall pay into the fund established by sub. (10) a sum equal to that assessed against each of the other <sup>under</sup> ~~such~~ exempt self-insured groups upon the issuance of an initial order. The order shall provide for a sum sufficient to secure estimated payments of the insolvent exempt self-insured group due for the period up to the date of the order and for one year following the date of the order and to pay the estimated cost of insurance carrier or insurance service organization services under par. (c). Payments ordered to be made to the fund shall be paid to the department within 30 days. If additional moneys are required, further assessments shall be made based on orders of the department with assessment prorated on the basis of the gross payroll for this state of each employer that is a member of the exempt self-insured group, reported to the department for the previous calendar year for unemployment insurance purposes under ch. 108. If an employer that is a member of the exempt self-insured is not covered under ch. 108, then the

department shall determine the comparable gross payroll for the employer. If payment of any assessment made under this subsection is not made within 30 days of the order of the department, the attorney general may appear on behalf of the state to collect the assessment.

(c) The department may retain an insurance carrier or insurance service organization to process, investigate and pay valid claims. The charge for such service shall be paid from the fund as provided under par. (b).

**SECTION 10.** 102.28 (10) of the statutes is created to read:

102.28 (10) SELF-INSURED GROUPS LIABILITY FUND. The moneys paid into the state treasury under sub. (9), together with all accrued interest, shall constitute the "self-insured groups liability fund".

(END OF INSERT)

(INSERT A)

Current law also establishes a self-insured employers liability fund, consisting of assessments paid into the fund by self-insured employers, that is used to pay the worker's compensation liability of current or former self-insured employers that are unable to pay that liability.

This substitute amendment permits two or more employers engaged in the forest industry, which is defined in the substitute amendment as the business of growing, harvesting, processing, or selling Christmas trees, firewood, maple syrup, or any other product derived from wood or wood fiber that is manufactured with woodworking equipment, that have combined assets of \$1,000,000 or more to enter into an agreement to pool their worker's compensation liabilities for the purpose of obtaining an exemption from the duty to insure, if those employers agree to assume joint and several liability for payment of those liabilities. Under the substitute amendment, DWD may exempt a group of such employers from their duty to insure if the group shows that it is able to self-insure its worker's compensation liability and if the group agrees to report all compensable injuries and to comply with the worker's compensation law and the rules of DWD. The substitute amendment also establishes a self-insured groups liability fund, consisting of assessments paid into

in  
order  
to  
obtain

the fund by self-insured groups, that is used to pay the worker's compensation liability of current or former self-insured groups that are unable to pay that liability.

**(END OF INSERT)**

**(END)**

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0493/1dn  
GMM:wlj:rs

February 2, 2006

Representative Mursau:

In reviewing this draft, please note all of the following:

1. "Self-insured group" is not defined. Under current law, "self-insured employer" is not defined because the only authority for an employer to self-insure is found in s. 102.28 (2) (b). Similarly, under the draft, the only authority for a group to self-insure is found in s. 102.28 (2) (bm). Accordingly, neither "self-insured employer" nor "self-insured group" need to be defined.
2. The DWD technical memorandum states that in order for group self-insurance to work, the members of the group need to assume joint and several liability for the payment of each other's liabilities. Accordingly, this draft expressly requires the members of a self-insured group to assume that liability.

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